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**MICHAEL J. PAHUTSKI**  
Counsel

**VIA OVERNIGHT MAIL**

**CINERGY®**

May 6, 2004

Mr. Thomas Dorman  
Executive Director,  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40602-0615

**RECEIVED**

MAY 07 2004

PUBLIC SERVICE  
COMMISSION

Re: Case No. 2004-00014

Dear Mr. Dorman:

Enclosed please find an original and 12 copies of ULH&P's Petition for Confidential Treatment of Transmission Circuit Thermal Capacities, which are being submitting to you for filing in the above-captioned case. Please return to me two (2) file-stamped copies in the enclosed overnight mail envelope.

If you have any questions, please feel free to contact me at (513) 287-3075.

Sincerely,



Michael J. Pahutski

MJP/mak

Enclosures

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION **RECEIVED**

In the Matter of The Union Light, Heat and Power Company's Integrated Resource Plan ) Case No. 2004-00014  
PUBLIC SERVICE COMMISSION

MAY 07 2004

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**THE UNION LIGHT, HEAT AND POWER COMPANY'S  
PETITION FOR  
CONFIDENTIAL TREATMENT OF  
TRANSMISSION CIRCUIT THERMAL CAPACITIES**

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The Union Light, Heat and Power Company (ULH&P) respectfully requests confidential treatment of transmission circuit thermal capacities contained in ULH&P's recently filed Integrated Resource Plan (ULH&P's IRP).

In support of its Petition for Confidential Treatment, ULH&P respectfully states:

1. ULH&P filed an IRP with the Commission on April 1, 2004. In this IRP filing, ULH&P provided thermal capacities of transmission circuits (Thermal Capacities) (Section 8. (3) (a) of ULH&P's IRP). ULH&P sought confidential treatment of this, and other, information in a consolidated pleading.
2. On April 19, 2004, the Commission granted confidential treatment to all of the information for which such confidential treatment was sought except for the Thermal Capacities. The Commission permitted ULH&P an additional twenty days to re-seek confidential treatment. ULH&P requests such reconsideration as to Thermal Capacities herein.

3. The Commission's regulations, in 807 KAR 5:001, provide that any person requesting confidential treatment of any material file a petition setting forth the grounds, pursuant to KRS 61.870 *et seq.*, upon which the Commission should classify that material as confidential.
4. Kentucky Revised Statute § 61.878(1)(c)(1) provides that records confidentially disclosed to an agency or required to be disclosed to the agency be exempt from Kentucky's open records statutes, KRS 61.870 *et seq.* where the records are generally recognized as confidential or proprietary, and which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.
5. ULH&P submits that the Thermal Capacities, if openly disclosed, pose serious security issues, and should therefore be considered confidential and proprietary, and further be considered "Critical Energy Infrastructure Information" or "CEII". The Federal Energy Regulatory Commission (FERC) has defined CEII as:
  - (1) Critical energy infrastructure information means information about proposed or existing critical infrastructure that:
    - (i) Relates to the production, generation, transportation, transmission, or distribution of energy;
    - (ii) Could be useful to a person in planning an attack on critical infrastructure;
    - (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and

(iv) Does not simply give the location of the critical infrastructure.<sup>1</sup>

6. FERC's concerns regarding protecting CEII are well founded, as FERC indicated in its order adopting the above language:

According to the National Infrastructure Protection Center, the energy sector is considered one of the most attractive terrorist targets. According to media reports, the FBI identified "multiple casings of sites" where users routed through switches in Saudi Arabia, Indonesia, and Pakistan examined "emergency phone systems, electrical generation and transmission, water storage and distribution, nuclear power plants and gas facilities." *Where vulnerable areas exist*, the Commission believes its responsibility is to reduce risks rather than to wait for proof that an attack is imminent or even likely.<sup>2</sup>

7. Thermal Capacities specify the operating limits of transmission facilities in MVA (Megavolt-amperes), and thus convey limits above which transmission facilities become stressed. Knowledge of ULH&P's Thermal Capacities could identify for terrorists the most "vulnerable areas" of ULH&P's transmission system. Thermal Capacity information would allow a terrorist organization to more effectively plan an attack on ULH&P's facilities, and would enable such an attack to have much further-reaching consequences than if terrorists had no such information to rely on.
8. Importantly, FERC has recognized that characteristics of transmission facilities, and not simply the location of the facilities, constitute CEII. FERC included the provision "Does not simply give the location of the

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<sup>1</sup> 18 C.F.R. 388.113.

<sup>2</sup> See *Critical Energy Infrastructure Information*, 102 F.E.R.C. ¶61,190, at P12 (February 21, 2003). (Emphasis added, footnoted omitted).

critical infrastructure” in 18 C.F.R. 388.113 specifically to recognize that attributes or characteristics of energy infrastructure must be protected. ULH&P seeks herein to protect just such sensitive characteristics, the Thermal Capacities.

9. ULH&P vigorously strives to maintain the confidentiality of its Thermal Capacities. Further, this information is generally held to be confidential and proprietary throughout the electric industry for the reasons discussed herein.

WHEREFORE, for the reasons stated herein, ULH&P requests that the Commission grant confidential treatment to the Thermal Capacities provided in Section 8. (3) (a) of ULH&P’s IRP.

Dated at Cincinnati, Ohio, this 6<sup>th</sup> day of May, 2004.

THE UNION LIGHT, HEAT AND  
POWER COMPANY

  
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Michael J. Pahutski, Counsel (0071248)  
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CERTIFICATE OF SERVICE

I hereby give notice that on this 6<sup>th</sup> day of May, 2004, I have sent by overnight mail an original and 10 true copies of this Petition for Confidential Treatment for filing with the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601, and have served a copy of the foregoing Petition for Confidential Treatment on the parties by regular U.S. mail or overnight mail to ULH&P's last IRP proceeding, appearing below.

  
Michael J. Pahutski

Hon. Elizabeth E. Blackford  
Assistant Attorney General  
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1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601-8204

Hon. Carl Melcher  
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